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**Diamond Contracting Company, Inc. and United Brotherhood of Carpenters, Local 144.** Case 10-CA-29473

December 11, 1996

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND FOX

Upon a charge and amended charge filed by the Union on July 26 and September 26, 1996, the General Counsel of the National Labor Relations Board issued a complaint on October 18, 1996, against Diamond Contracting Company, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint,<sup>1</sup> the Respondent failed to file an answer.

On November 12, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On November 14, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated November 4, 1996, notified the Respondent that unless an answer were received by November 8, 1996, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

<sup>1</sup> Although the General Counsel's motion indicates that the complaint was returned to the Regional Office unclaimed, summary judgment is not precluded. Failure or refusal to accept service cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a Georgia corporation, has been engaged as a contractor in the building and construction industry, constructing residential facilities, and has done business in various counties throughout the State of Georgia. During the 12-month period preceding issuance of the complaint, the Respondent derived gross revenues in excess of \$500,000, purchased and received at its Georgia jobsites, products, goods, and materials valued in excess of \$50,000 directly from suppliers located outside the State of Georgia, and purchased and received at its Georgia jobsites, products, goods, and materials valued in excess of \$50,000 from other enterprises located within the State of Georgia, each of which other enterprises had received the products, goods, and materials directly from points outside the State of Georgia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

About the end of June 1996, the Respondent instructed its employees not to discuss their hours of employment or rates of pay with other employees.

About July 27, 1996, the Respondent failed and refused to recall to active employment its employees Darrel Murray, Lamar Butler, and Ronnie R. Buckins because they joined, supported, or assisted the Union and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

**CONCLUSIONS OF LAW**

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act. In addition, by failing and refusing to recall employees Murray, Butler, and Buckins to active employment, the Respondent has also been discriminating in regard to the hire, or tenure, or terms, or conditions of employment of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by failing and refusing to recall Darrel Murray, Lamar Butler, and Ronnie R. Buckins to active employment, we shall order the Respondent to offer the discriminatees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any and all references to the unlawful failure and refusal to recall the discriminatees, and to notify them in writing that this has been done.

## ORDER

The National Labor Relations Board orders that the Respondent, Diamond Contracting Company, Inc., Byron, Georgia, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Instructing its employees not to discuss their hours of employment or rates of pay with other employees.

(b) Failing or refusing to recall to active employment its employees because they join, support, or assist the Union or engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection or in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Darrel Murray, Lamar Butler, and Ronnie R. Buckins full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Darrel Murray, Lamar Butler, and Ronnie R. Buckins whole for any loss of earnings and other benefits suffered as a result of the discrimination

against them, in the manner set forth in the remedy section of this Decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful failure and refusal to recall the foregoing discriminatees, and within 3 days thereafter notify them that this has been done and that the unlawful conduct will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facilities in the State of Georgia copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 26, 1996.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 11, 1996

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William B. Gould IV, Chairman

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Margaret A. Browning, Member

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Sarah M. Fox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT instruct our employees not to discuss their hours of employment or rates of pay with other employees.

WE WILL NOT fail or refuse to recall to active employment our employees because they join, support, or assist the United Brotherhood of Carpenters, Local 144 or engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Darrel Murray, Lamar Butler, and Ronnie R. Buckins full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Darrel Murray, Lamar Butler, and Ronnie R. Buckins whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL, within 14 days from the date of this Order, remove from our files any and all references to the unlawful failure and refusal to recall the foregoing employees to active employment and WE WILL, within 3 days thereafter, notify them that this has been done and that our unlawful conduct will not be used against them in any way.

DIAMOND CONTRACTING COMPANY,  
INC.